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OSHA Inspection Process

The Occupational Safety and Health Administration establishes and enforces protective standards of safety and health requirements in the workplace. OSHA inspectors, called compliance safety and health officers are trained industrial hygienists and safety professionals whose goal is to assure compliance with OSHA requirements and help employers and workers reduce on-the-job hazards to prevent injuries, illnesses and deaths in the workplace.

What gives OSHA the right to inspect my business?

Under the Occupational Safety and Health Act of 1970, the Occupational Safety and Health Administration (OSHA) is authorized to conduct workplace inspections and investigations to determine whether employers are complying with standards issued by the agency for safe and healthful workplaces.

Under the Act, an OSHA compliance officer is authorized to: "Enter without delay and at reasonable times any factory, plant, establishment, construction site or other areas, workplace, or environment where work is being performed by an employee of the employer"; and to "Inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and equipment therein, and to question privately any such employer, owner, operator, agent or employee."

Will I know in advance when OSHA plans to inspect my business?

Normally, OSHA conducts inspections with no advance notice. The OSHA compliance officer arrives at the facility, presenting proper identification and requesting to conduct the inspection. If the employer allows the OSHA compliance officer to enter the facility to conduct the inspection this is deemed to be a voluntary inspection. If the employer denies the OSHA compliance officer admission into the facility to conduct the inspection, the compliance officer must obtain an inspection warrant before entering the facility.

Why does OSHA conduct inspections?

An OSHA inspection may be initiated for the following reasons:

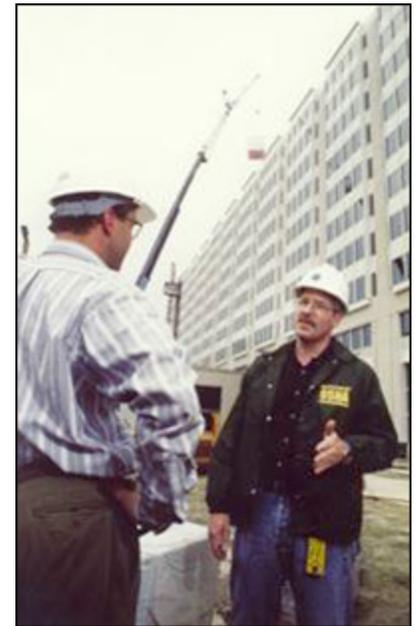
- ✓ Imminent danger situations – a hazard or condition exists that could cause death or serious harm.
- ✓ Fatalities and catastrophes – incidents that involve a death or the hospitalization of three or more employees.
- ✓ Complaints – employee allegations of hazards or violations in the workplace.

- ✓ Referrals – information regarding hazards from other federal, state or local agencies, individuals, organizations or the media.

- ✓ Follow ups – confirm abatement of violations from previous inspections

- ✓ Programmed – aimed at specific high hazard industries.

- ✓ Targeted – workplaces that have experienced high rates of injuries/illnesses.



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Here's what OSHA usually looks for when conducting inspections.

The following is a list of the top 10 most frequently cited standards following inspections of worksites by federal OSHA for fiscal year 2011. OSHA publishes this list to alert employers about these commonly cited standards so they can take steps to find and fix recognized hazards addressed in these and other standards before OSHA shows up. Far too many preventable injuries and illnesses occur in the workplace.

1. [1926.451 – Scaffolding](#)
2. [1926.501 – Fall Protection](#)
3. [1910.1200 – Hazard Communication](#)
4. [1910.134 – Respiratory Protection](#)
5. [1910.147 – Lockout/Tagout](#)
6. [1910.305 – Electrical, Wiring Methods](#)
7. [1910.178 – Powered Industrial Trucks](#)
8. [1926.1053 – Ladders](#)
9. [1910.303 – Electrical, General Requirements](#)
10. [1910.212 – Machine Guarding](#)



[Resources for Most Frequently Cited Standards](#)

What should I expect if my business is inspected by OSHA?

Opening Conference – OSHA compliance officers will explain the purpose and type of inspection; request and review appropriate documents and records; interview the employer, and identify company representatives that will accompany the OSHA inspector.

Walk-through Assessment – There will be a physical inspection of the facility or worksite to identify actual and potential safety and health hazards and OSHA will document hazards to support issuance of citations. Examples of frequently cited hazards: *excessive noise, trip & fall hazards, machine guarding, personal protective equipment violations, lack of eye wash station(s), availability of Material Safety Data Sheets, etc.*

Closing Conference – OSHA compliance officers will meet with company representative(s); review violations and other pertinent information found during the inspection and discuss the issuance of citations. Company representative(s) will be advised of their rights and the appeal process.

Issuance of Citation – The OSHA compliance officer reports his/her findings to the area director. The area director determines penalties and an abatement period for each violation. A citation is sent by certified mail to the employer. The employer may request an informal conference with the area director. The citation must be posted, as instructed, for affected employees to review.



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OSHA Citations

What types of violations result in formal citations?

An OSHA violation is an unacceptable deviation from the intent of a standard or industry practice. Depending on the circumstances and degree of exposure of an employee to a hazard, a citation may be issued for each violation of any and all particular standards, resulting in a penalty to the employer, not the exposed employee.

What are the various types of OSHA citations?

1. **De minimis notice** – there is no relationship between the violation and safety and health, potential for injury is miniscule.
2. **Non-serious** – if a violation could lead to an injury/illness, but the probability that it would result in death or serious injury is minimal.
3. **Serious** – there is substantial probability that the hazard or condition could result in death or serious injury, unless the employer did not and could not know about the condition.
4. **Repeat** – is a repeat violation for a violation that was cited previously by a compliance officer.
5. **Willful** – is the employer's purposeful or negligent failure to correct a known deficiency.
6. **Failure to Abate** – when a cited violation is not brought into compliance within the specified time period.
7. **Failure to Posting** – failure to post the citation at the location of the violation or incident for the specified time period.

What type of Penalties can OSHA levy against my business?

De minimis notice	\$0
Non-serious	\$0 - 7,000
Serious	\$0 - 7,000
Repeat	\$0 - 70,000
Willful	\$5,000 minimum - \$70,000 maximum
Failure to Abate	\$0 - 7,000 per day
Failure to Posting	\$0 - 7,000

Will my employees be involved in the inspection process?

Yes. Employees are often involved in the OSHA inspection. OSHA compliance officers are likely to speak with employees to confirm that they are aware of workplace hazards and have been trained to identify hazards and protect themselves from those hazards.



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Employee: Rights during the Inspection Process

1. **Right To Confidentiality:** Employees who make a complaint to OSHA about safety and health hazards in their workplaces have a right to confidentiality. If the employee requests that his/her name not be used, OSHA will not disclose that information to the employer about who filed the complaint or requested the inspection.
2. **Whistle-Blower Protections:** Employees have a right to seek safety and health on the job without fear of punishment. That right is spelled out in Section 11(c) of the OSH Act. The law forbids the employer from punishing or discriminating against employees for exercising such rights as: complaining about job and safety health hazards; participating in OSHA inspections, conferences, hearings, or other OSHA related activities.
3. **Right To Representation:** OSHA Act gives employees or a workers' representative the right to accompany an OSHA compliance officer during an inspection. The labor union (if applicable), or the employees must choose the representative. The employer can not choose the workers' representative.
4. **Right To Help the OSHA Compliance Officer:** Workers have a right to talk privately to the compliance officer on a confidential basis. Workers can point out hazards; describe accidents or illnesses that resulted from those hazards; discuss past worker complaints about hazards; inform the inspector if working conditions are not normal during the inspection.
5. **Right To Information Following the Inspection:** Workers have the right to meet with OSHA inspector and employer during closing conference to discuss how identified hazards will be abated. If not practical to hold a joint conference, separate conferences will be held. Workers can also request a written summary from OSHA.

6. **Right to Challenge the Abatement Period:** Employees or their representative(s) have the right to contest the time OSHA allows to correct a hazard. This must be filed in writing to the area director within fifteen working days after the citation is issued.
7. **Right To Information If No Inspection Is Conducted or No Citation(s) Issued:** If the area director decides not to inspect the workplace after receiving a complaint from an employee, he/she will send a certified letter to the complainant explaining the decision and the reasons for it. If the complainant is not satisfied, he/she can appeal the decision to the OSHA regional administrator for review. The same procedures are in effect in the event OSHA decides not to issue a citation after an inspection.

Employer: Rights during the Inspection Process

1. **Right to Accompany Inspector During Inspection:** The employer or his representative has the right to accompany the inspector during the inspection and take photos.
2. **Trade Secrets:** At the end of the inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. Information obtained in such areas including photos shall be labeled "confidential trade secret", and only disclosed in accordance with the provisions of section 15 of the Act.
3. **Request An Informal Conference with the Area Director to:**
 - Clarify the basis for the citation.
 - Modify abatement dates or proposed penalties.
 - Request withdrawal of a cited violation.
 - Make an effort to settle the case.
4. **Right to Contest the Citation:** If the citation is not contested – the citation and the proposed penalty become a final order of the Occupational Safety and Health Review Commission and are not subject to review by any court or agency.



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The Appeal Process

Employers are Able to Contest Citations

1. Must send notice in writing to the area director within 15 working days of receiving the citation.
2. The notice of contest must state the violations, abatement periods, or penalties that are being contested.
3. The area director then sends notice to the Occupational Safety and Health Review Commission (OSHRC) which in turn notifies the employer the case has been received.
4. Employer is required to notify affected employees that the case has been filed with the OSHRC.
5. Within 20 days of receipt of the employer's notice of contest – the Secretary of Labor must file a complaint with the OSHRC.
6. A copy is sent to the employer and any other interested parties.
7. The employer must file a written answer to the complaint with the OSHRC within 20 days of receiving the complaint.
8. Any allegation not denied is considered to be admitted.
9. The written answer must contain the specific defense(s) to be raised.
10. Failure to answer the complaint – citation and penalties may become final.
11. Any settlement prior to a hearing must be agreed upon by the Secretary of Labor and the employer.
12. If applicable – affected employees and the union must be shown the settlement before it will be approved.

The Hearing

All parties must be notified at least 30 days in advance. The hearing is presided over by an Administrative Law Judge. The proceedings follow Federal Rules of Evidence. Each side may present evidence, witnesses and there may be a cross-examination of witnesses.

Post Hearing Briefs

Before the judge renders a decision – each party may submit a proposed finding of facts and conclusions of law – and why the judge should rule in their favor.

Judge's Decision

Based on evidence and arguments presented. The decision is sent by mail to all parties. The parties can protest the decision by filing a Petition for Discretionary Review. Instructions on filing the petition are included in the judge's decision letter.

Discretionary Review

If the Commission does not review the judge's decision, it becomes a final order of the Commission – 30 days after the decision has been filed. If the decision is reviewed, the Commission will issue its own written decision which becomes the final order. Any party adversely affected by the final order of the Commission can appeal to the US Court of Appeals.



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How Can Beacon Mutual Help You?

The Beacon Mutual's loss prevention staff works with our policyholders to help provide a safer working environment and to help those employers understand their OSHA obligations and develop and/or maintain safety programs to address hazards in the workplace.

If you are not already working with a loss prevention consultant, call 1-888-886-4450 to arrange for a free consultation. In addition, the Beacon offers free safety seminars on many of the topics most often cited by OSHA. For a complete list of seminar courses, visit: <http://www.beaconmutual.com> (see loss prevention – training seminars).



References:

OSHA Inspections OSHA 2098 (2002 Revised)

<http://www.osha.gov/Publications/osha2098.pdf>

OSHA Fact Sheet – OSHA Inspections

http://www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf

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